simply in compliance with the theory of mutuality,[9] a doctrine inapplicable where the contract can no longer be specifically enforced on behalf of the vendee.[10] Accordingly it seems that on principle the same rule should be applied as in cases where for other reasons the vendor cannot do his part, namely, that a vendor must perform substantially before he can maintain his bill for a specific performance.[11]

ENFORCEMENT OF OBLIGATION IMPOSED UPON THE OWNER OF REAL PROPERTY IN VIRTUE OF A FOREIGN JUDGMENT OF DIVORCE.—A novel set of facts is presented in the recent case of *De Graffenried* v. *DeGraffenried* (1912) 46 N. Y. L. J. No. 80. The plaintiff, a citizen of New York, married the defendant, a Swiss citizen, in France, the matrimonial domicil being Switzerland. Eventually the defendant brought suit for divorce in a Swiss court of admitted jurisdiction, but on a cross-bill being filed by the plaintiff she obtained the divorce. Subsequent to the marriage and before the divorce, the plaintiff purchased New York real estate in her own name, and conveyed to her husband, without consideration but by full covenant and warranty deed, the undivided half-interest therein sought to be recovered in this suit. No disposition of this land was made in the divorce decree, but under Swiss law the party against whom a divorce is granted must return to the other party all property acquired from the latter in any manner during coverture. The general rule is elementary that law of the matrimonial domicil will ordinarily govern the rights of the parties to a foreign marriage, as to their existing property in that place and as to all personalty everywhere, while as to immovables the *lex loci rei sitae* is controlling,[1] in the absence of any contract subjecting their realty to a different law, and it further seems clear that the parties here cannot be deemed to have made a tacit contract with reference to the community laws of France or Switzerland,[2] for in that event the conveyance of the half-interest would have been superfluous. Clearly then, the *lex sitae* prevails, and the defendant holds the title to this land, upon which the *lex domicilii* can of course have no extra-

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[9]Withy *v.* Cottle (1823) 1 Sim. & S. 174; Adderley *v.* Dixon (1824) 1 Sim. & S. 607. Similarly specific performance will not be decreed at the instance of one party unless the other could have maintained a bill. Norris *v.* Fox (1891) 45 Fed. 406; Hills *v.* Croll (1845) 2 Phillips 60.

[10]Nor need such a result attend the fact that the vendee might insist on the vendor's performance so far as it lay in his power to perform, as if a vendee who had contracted for a house and lot should demand the latter after the former had burned. Such a case could well be treated as are those where the vendor has contracted to convey more than he has or can procure. There the vendee can compel the vendor to perform so far as he can, but the vendor can maintain no bill if the vendee declines to go on. Barnes *v.* Wood (1869) L. R. 8 Eq. *424; Cleaton *v.* Gower (1674) Finch 184; Perkins *v.* Ede (1852) 16 Beav. 193.

[11]Dyer *v.* Hargrave (1805) 10 Ves. Jr. 505; Perkins *v.* Ede *supra.*

[1]Dicey, Conflict of Laws, (2nd. ed.) 500, 510, 512, 529. It is to be noted that even express contracts will be held invalid if they are prohibited by the law of the place where they are sought to be enforced. Story, Conflict of Laws, (8th ed.) 267.

[2]See French Code, § 1402.

territorial effect. But on any theory of divorce[3] it is evident that the Swiss decree changed the status of the parties and adjudicated their rights, thus imposing upon the defendant an ubiquitous personal obligation,[4] which seems clearly to be of a quasi-contractual nature.[5] The question is thus squarely raised as to whether or not equity can decree specific performance of a quasi-contractual obligation. That it can do so is evidenced by the fact that a bill in equity for an account is essentially a specific performance of an obligation in no wise founded upon contract.[6]

Equity has always stood ready in a proper case when jurisdiction over a defendant was obtained, to decree a conveyance of land without the jurisdiction.[7] *A fortiori,* then, when the land is within it, the only remaining difficulty is to determine whether the recognition of the local enforceability of this obligation would contravene any settled domestic policy; and in this connection the novelty of the facts here presented necessitates a resort to analogies. Obviously the source of this obligation does not belong to that restricted class of laws which are held to be purely local in their aim and scope;[8] nor is it a conception new to our law that upon divorce the innocent party shall recover part of the common property.[9] In the closely analogous cases of absolute gifts upon marriage, the wife's right to a recovery was enforced in the earliest formative period of the common law,[10] under the influence probably of the Roman law, which recognized an enforceable quasi-contractual obligation in cases where there was a failure of *causa*—a word having a far broader connotation than our "consideration."[11] Moreover, the whole trend of our modern legislation and decisions has been to favor and protect a wife,[12] and conveyances made by her without consideration are most carefully scrutinized.[13] Since the plaintiff is in no way disabled by the local law from holding land, and since the relief here sought would operate to restore land given on the obvious expectation of the continuance of marital relations, it is difficult to see how the policy of the State would be infringed or its

[3]Dicey, Conflict of Laws, (2nd ed.) 794-796.

[4]Holmes, J., in Falls *v.* Eastin (1909) 215 U. S. 1; and see Slater *v.* Mexican Nat'l R. R. Co. (1904) 194 U. S. 120.

[5]See Steamship Co. *v.* Joliffe (1864) 2 Wall. 450, 457; Keener, Quasi-Contracts, 16, 17.

[6]Langdell, Brief Survey of Equity Jurisdiction, (2nd ed.) 75 *et seq.*

[7]Mitchell *v.* Bunch (N. Y. 1831) 2 Paige 606.

[8]See De Brimont *v.* Penniman (1873) 10 Blatch. 436.

[9]Renwick *v.* Renwick (N. Y. 1843) 10 Paige 420; Tewksbury *v.* Tewksbury (Miss. 1839) 4 How. 109.

[10]Y. B. 19 Ed. III, No. 6; I Dyer (28 Hen. VIII.) Hobbs f. 13, pl. 61-63; and see 2 Dyer f. 147, pl. 75, 76. Stephens *v.* Totty (1602) Cro. Eliz. 908 also recognizes this rule.

[11]*Causa* can best be defined as the dominant motive or expectation accompanying the plaintiff's performance. The name of the action *condictio causa data causa non secuta,* Dig., Bk. 12, Tit. 4, is self-explanatory. See also Dig., Bk. 12, Tit. 6.

[12]See for instance Riesz's Appeal (1873) 73 Pa. 485. A further analogy of some force is the allowance of a suit by the wife to recover alimony decreed to her in another jurisdiction. Barber *v.* Barber (1858) 21 How. 582; and see 10 COLUMBIA LAW REVIEW 555.

[13]Boyd *v.* De La Montagnie (1878) 73 N. Y. 498; Lamb *v.* Lamb (N. Y. 1897) 18 App. Div. 250, 257.

interests prejudiced by the granting of the decree.[14] Obviously it would not result in giving to a foreign law a direct extraterritorial effect on the title to local land.[15] and a merely indirect effect is never considered objectionable.[16] Furthermore, such a decision would be consistent with the predominant force given to the *lex domicilii* in common law countries in determining jurisdiction for divorce and the rights of the parties flowing therefrom, and with the modern tendency, asserted by eminent English authority, to modify the complete control of the *lex sitae* over all matters affecting immovables.[17] The increasing intercourse between nations necessitates an expansion rather than a restriction of the conception of comity,[18] but a denial of the relief here sought would be in effect to refuse, where immovables are concerned, the application of comity in any case whatsoever where a claim is founded on an obligation imposed by the law of a foreign jurisdiction.

INJURIES TO PERSON AND PROPERTY IN A COMMON ACCIDENT AS SEPARATE CAUSES OF ACTION.—It is a familiar rule of obvious wisdom that where a single wrongful act results in the destruction of more than one piece of property, a recovery of part of the damages is conclusive as to the whole,[1] and in like manner in a suit for personal injuries all items of damage must be set forth or the right to compensation for them will be completely barred.[2] This practice is undoubtedly necessary to prevent vexatious litigation and oppression.[3] But the question of its applicability in cases of injury both to person and to property by the same wrongful act, as affecting the plaintiff's right to separate actions, has been a subject of difference among the authorities. This situation arose before the New Jersey Court of Errors and Appeals in the recent case of *Ochs* v. *Public Service Ry.* (N. J. 1911) 81 Atl. 495, and it was held that a former judgment for damages to property was no bar to the plaintiff's present action for personal injuries. Although this decision has the support of high authority both in England and the United States,[4] the majority of American cases have apparently

[14]Where such is not the case, foreign obligations should be enforced. See Hilton *v.* Guyot (1894) 159 U. S. 113, 233.

[15]In the recent case of Matter of Majot (1910) 199 N. Y. 29 there are many expressions which may seem to contravene the views herein advanced. See 10 COLUMBIA LAW REVIEW 147. But considering the present case as an equitable action to enforce a purely personal obligation of a quasi-contractual nature, it is submitted that the Majot case is not controlling.

[16]See Note 9 *supra.*

[17]Dicey, Conflict of Laws, (2nd ed.) 729, 837; and see Polson *v.* Stewart (1897) 167 Mass. 211.

[18]See 12 COLUMBIA LAW REVIEW 60.

[1]Knowlton *v.* New York etc. R. R. Co. (1888) 147 Mass. 606.

[2]Fetter *v.* Beale (1703) 1 Salk. 11.

[3]O'Neal *v.* Brown (1852) 21 Ala. 482; see Farrington *v.* Payne (N. Y. 1818) 15 Johns. 432.

[4]Brunsden *v.* Humphrey (1884) L. R. 14 Q. B. D. 141; Watson *v.* Texas & Pacific Ry. Co. (1894) 8 Tex. Civ. App. 144; Reilly *v.* Sicilian Asphalt Co. (1902) 170 N. Y. 40; Powers *v.* Sherin (N. Y. 1903) 89 App. Div. 37.